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## Appeal Decision

Site visit made on 16 July 2019

**by Neil Pope BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 July 2019**

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**Appeal Ref: APP/N1215/W/18/3210703**

**Huntley Down, Milborne St. Andrew, Dorset, DT11 0LN.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Lewis Wyatt (Construction) Ltd against the decision of North Dorset District Council (the LPA).
  - The application Ref. 2/2017/1871/FUL, dated 22 November 2017, was refused by notice dated 25 July 2018.
  - The development proposed is 30 new homes, including 12 affordable homes, with access from Huntley Down.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Prior to the LPA's determination of the application the description of the proposed development was changed. The revised description is: 30 dwellings with garages, form vehicular access. The LPA's decision also takes into account some revised plans that were submitted in May 2018. I have determined the appeal on the basis of the amended description and the revised plans<sup>1</sup>.
3. The appeal site lies beyond 400 metres and within 5 km of the Dorset Heathlands Special Protection Area (SPA), Dorset Heathlands Ramsar site and Dorset Heaths Special Area of Conservation (SAC). It is also within the catchment of Poole Harbour Site of Special Scientific Interest (SSSI), SPA and Ramsar site. Having regard to the representations made by Natural England (NE) and the provisions of the Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (SPD), there is a probability or risk that the proposed development, in combination with other plans or projects, could have a significant effect on these European sites.
4. In January 2019, the LPA resolved to grant planning permission for 25 dwellings on the appeal site (ref. 2/2018/1240/FUL). I note that NE did not object to that application, subject to the LPA securing a Heathland Infrastructure Project (HIP) prior to the occupation of any dwelling. I also note that the unilateral undertaking (UU) that has been submitted by the appellant under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) includes financial contributions towards the cost of mitigation

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<sup>1</sup> On behalf of the appellant, I have been informed that there are several errors in the list of drawings specified within the appellant's suggested 'plans' condition. I have determined the appeal on the basis of the clarification provided by the appellant's agent on 15 July 2019 i.e. plans 17161.08B, 17161.09D, 17161.66A (does not exist).

- within the Dorset Heathlands and nitrate mitigation within Poole Harbour<sup>2</sup>. The LPA has suggested a planning condition requiring a HIP to be provided.
5. I concur with the Appropriate Assessment that was undertaken by the LPA when it determined the application that is now the subject of this appeal. With the proposed mitigation, including HIP, the appeal scheme would not adversely affect the integrity of the above noted habitats sites.
  6. The LPA is unable to demonstrate a five year housing land supply<sup>3</sup> (HLS). Given the above and the provisions of paragraph 177 of the National Planning Policy Framework (the Framework), the presumption in favour of sustainable development applies.
  7. The UU also includes provision for 12 of the proposed dwellings to be affordable housing and financial contributions towards the cost of various infrastructure. If the appeal was to be allowed it would be necessary for me to consider all of the planning obligations within the UU against the provisions of paragraph 56 of the Framework and the Community Infrastructure Levy Regulations 2010.
  8. In April 2019, the LPA became part of the new unitary Dorset Council.

### **Main Issue**

9. The main issue is whether any adverse impacts of the proposal, with particular regard to: the density of the proposed development and its likely effect upon the character of Milborne St. Andrew; the proposed layout and whether this would secure the successful integration of the affordable dwellings within the enlarged settlement and; the likely effect upon the living conditions of neighbouring residents, having particular regard to outlook, privacy and noise disturbance, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **Reasons**

#### *Planning Policy*

10. The development plan includes the North Dorset Local Plan Part 1 (LP1) adopted in 2016 and the saved policies of the North Dorset Local Plan (2003). The appeal site lies outside the settlement boundary for Milborne St. Andrew.
11. The most relevant development plan policies to the determination of this appeal are LP1 policies 2 (core spatial strategy), 6 (housing distribution) 7 (delivering homes), 8 (affordable housing), 20 (countryside) 24 (design) and 25 (amenity).
12. The site forms part of the countryside surrounding the village of Milborne St. Andrew. The proposal would be at odds with the provisions of LP1 policies 2 and 20. However, given the HLS position within the district and the need to release some greenfield sites to meet the housing requirement, I afford only limited weight to this conflict with these aspects of the development plan.
13. Whilst not forming part of the development plan, the Examiner's Report into the Milborne St. Andrew Neighbourhood Plan 2018 to 2033 (NP) was published in May 2019. The Report concludes that, subject to certain detailed

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<sup>2</sup> This would allow for either a financial contribution or the removal of 1.4 ha of land from agricultural production.

<sup>3</sup> The LPA has informed me that it can only demonstrate about 3.3 years HLS.

recommendations, the NP should proceed to referendum. The most relevant NP policies to this appeal are: MSA1 (housing needs) and MSA14 (character). I understand that a referendum is due to take place in August 2019. At this stage, the NP can be given moderate weight.

#### *Impact upon the Character of the Village*

14. LP1 policy 7 requires, amongst other things, the design and layout of development to achieve a residential density that makes effective use of a site and respects the character and distinctiveness of the locality. It also identifies high-density housing as above 50 dwellings per hectare (dph). The Framework also supports the efficient use of land, taking into account matters such as the desirability of maintaining an area's prevailing character and setting. Whilst NP policy MSA14 includes a requirement for the density of housing to be below 20 dph, the NP Examiner found that this too prescriptive and should be deleted.
15. As I noted during my visit, the different types and sizes of dwellings in the surrounding area and the layout of the neighbouring residential estates (which are typified by front gardens and private driveways) creates a suburban character. There is also variation in the density of development. On behalf of the appellant, existing densities have been calculated to be between 17 dph (Bladen View) and 31 dph (Coles Lane).
16. The proposed development would add to the mix and range of dwellings found within this part of the village. Space would be provided around some of the buildings and the layout would reinforce the existing suburban character. At a density of 30 dph, the proposal would not be uncharacteristic of the settlement or harm any important distinctive features of the local area. As noted by the LPA's planning officer, whilst the house sizes may be smaller than some neighbouring dwellings, the development would not appear cramped and the proposed layout would respect the pattern and form of Huntley Down.
17. The development would secure the effective use of a site whilst respecting the character of the locality. In relying on an average density of 22.7 dph the LPA appears to have adopted a rather crude and prescriptive approach to assessing the impact upon the character of this part of the village. It is unclear why the LPA found the density of housing in Coles Lane appropriate but now considers that a slightly lower density for the appeal site would be harmful.
18. The density of the development proposed in the appeal scheme would not harm the character of Milborne St. Andrew. The proposal accords with LP1 policy 7.

#### *Layout – Affordable Dwellings*

19. LP1 policy 8 includes a requirement for the affordable housing to be designed to be indistinguishable from other housing on a development site. On larger sites, this should be 'pepper-potted' amongst the market housing, or where there is a high proportion of affordable housing, grouped in small clusters amongst the market housing. The LPA has informed me that rather unhelpfully there is no definition of a 'larger site' but has argued that as the proposal is classed as major development this is a 'reasonable indicator' of a 'larger site'.
20. Given that any scheme over 10 dwellings would be classed as a major development, I am unconvinced by the LPA's argument as to the appropriateness of defining the appeal site as a 'larger site' in the context of LP1 policy 8. In a scheme of 30 dwellings on a 1 ha site, 'pepper-potting' may

not be a viable/realistic proposition for a developer/Registered Provider. A more sensible/logical interpretation of a 'larger site' could be made having regard to the size/scale of the LPA's strategic site allocations/urban extensions.

21. Whatever the actual definition of a 'larger site', I note that in commenting on the application the LPA's Housing Enabling Team Leader was supportive of the proposed 12 affordable dwellings being split into two groups within the site rather than being all grouped together. In this regard, the proposed mix of 1, 2 and 3 bedroom dwellings would be in clusters towards either end of the estate layout. Whilst, to reflect identified needs, these dwellings would be smaller in size than some of the open market units, they would have the same architectural style and would be built alongside open market units, including some existing neighbouring dwellings. The proposed affordable dwellings would form an integral part of the overall development and would assist in helping to create a mixed and balanced community.
22. There is no cogent evidence to substantiate the LPA's concern that the proposed layout would fail to secure the successful integration of the affordable dwellings within the enlarged settlement. The proposal accords with policy 8.

#### *Living Conditions*

23. The neighbouring properties that would be most affected by the proposed development are 17 and 19 Huntley Down, 35 and 39 Coles Lane and 1 and 2 Coles Farm Cottages.
24. Proposed units 6 and 8 would be built adjacent to the boundaries with 17 and 19 Huntley Down, unit 23 would be adjacent to 39 Coles Lane and units 25-26 would be adjacent to 35 Coles Lane. There would also be car parking and turning areas located to the rear of 17 and 19 Huntley Down, as well as on land at the rear of 1 and 2 Coles Farm Cottages.
25. On behalf of the appellant, it has been calculated that units 6 and 8 would be about 15.5 metres from the facing rear elevations of 17 and 19 Huntley Down. The facing (side) elevations of units 6 and 8 would not include any first floor windows. Notwithstanding the difference in levels between the site and these neighbouring properties, these proposed units would not be so close or tall as to appear overbearing or oppressive. Whilst they would change the outlook for the occupiers of these neighbouring properties this would not result in any serious loss of amenity. Moreover, the absence of windows from the flank walls would avoid any significant overlooking and harmful loss of privacy.
26. Nevertheless, as I noted during my visit, the rear gardens of 17 and 19 Huntley Down comprise rather tranquil and pleasant areas of private amenity space. They are clearly well used spaces and maintained by the residents of these neighbouring properties. The proposed five parking spaces that are intended for this part of the layout would introduce noise and activity in close proximity to these existing rear gardens. This would be likely to cause noise disturbance for the occupiers of Nos. 17 and 19, as well as resulting in fumes from some vehicle exhausts permeating into these neighbouring garden spaces. This would detract from the enjoyment of these gardens and diminish the living conditions for those living alongside. Whilst, by itself, this would not be so great as to justify withholding permission, it weighs against an approval. Boundary vegetation/treatment would avoid any harmful glare from headlights.

27. On behalf of the appellant, it has been calculated that the facing flank wall of plot 23 would be about 10.5m from the nearest part of 35 Coles Lane. There would be no windows on this flank wall and oblique views from windows in the rear elevation towards No. 35 Coles Lane and its garden would not give rise to any serious overlooking or loss of privacy. Plot 23 would also be sited so as not to appear overbearing or oppressive for those already living alongside.
28. From the facing first floor windows in proposed units 25 and 26 there would be views into the rear garden and conservatory of 35 Coles Lane. However, on balance, these windows would be set back a sufficient distance so as not to result in any serious overlooking or harmful loss of privacy. The set-back would also avoid these units appearing overbearing or oppressive for the occupiers of 35 Coles Lane.
29. The proposed development would introduce over 10 car parking spaces in very close proximity to the rear of 1 and 2 Coles Farm Cottages. The residents of these houses would have an outlook from their first floor facing windows across a sizeable parking forecourt. Moreover, notwithstanding the tall boundary fence, the use of these spaces has the potential to cause serious noise disturbance for the occupiers of these neighbouring dwellings, especially during the early morning and at night. The residents of 1 and 2 Coles Farm Cottages would be likely to experience unacceptable disturbance by vehicle movements on this part of the proposed estate, including noise associated with the slamming of car doors.
30. The future use/enjoyment of the rear gardens to 1 and 2 Coles Farm Cottages would also be compromised by the noise and fumes associated with so many vehicles parking/manoeuvring immediately alongside. Although the existing boundary fence would avoid any harmful glare from headlights/tail lights, the use of the proposed parking spaces on this part of the estate layout would be likely to result in an unacceptable loss of amenity for the residents of 1 and 2 Coles Farm Cottages. The proposal would significantly diminish the enjoyment of these neighbouring properties and conflicts with the provisions of LP1 policies 24 and 25. Whilst seeking to boost significantly the supply of housing, the Framework also requires the creation of places with a high standard of amenity for existing and future users. The proposal would fail to achieve this.
31. I note that the revised scheme for 25 dwellings on the appeal site, which the LPA has resolved to approve, also includes a number of car parking areas adjacent to 1 and 2 Coles Farm Cottages. However, there are slightly fewer parking spaces, these are broken up with planting and also set back further from the boundary. Even if this becomes a fallback position available to the appellant it does not outweigh the harm to the living conditions of the residents of 1 and 2 Coles Farm Cottages that I have identified.
32. There is nothing of substance to demonstrate the proposals would result in any harmful loss of light for those living alongside. However, the noise disturbance that I have identified would unacceptably harm the living conditions of some neighbouring residents. This weighs very heavily against an approval.

### *Benefits*

33. The proposed development would increase the choice and supply of homes within this part of Dorset and assist in meeting the housing needs of the local community. It would help address the shortfall in supply of housing and would

integrate within a village that has a range of services and facilities. The proposal would accord with the objectives of LP1 policy 6 and satisfy the social objective of the Framework.

34. The development would provide economic benefits both during the construction phase and afterwards, with incoming residents supporting and strengthening the viability of local businesses, services and facilities. It would also satisfy the economic objective of the Framework.
35. The benefits of the appeal scheme weigh considerably in favour of an approval.

#### *Other Matters*

36. NP policy MSA1 allows for the release of unallocated greenfield sites for open market housing where, as in this instance, there is a shortfall in supply. As noted by the NP Examiner, planning applications for development on land not allocated in the NP need to be considered on their merits and having regard to the broad presumption in favour of sustainable development. The proposal would not harm the character of the local landscape or undermine the NP.
37. My attention has been drawn to selected extracts from an appeal decision on a site in Didcot and a previous appeal for 19 dwellings on the appeal site which was dismissed in 2000. However, each case must be determined on its own merits and the development plan and national planning policies that are relevant in the appeal before me are materially different to those which were considered in the Didcot appeal and the appeal that was dismissed in 2000. Furthermore, I have not been provided with copies of these previous appeal decisions and, in the time available to me, have been unable to locate copies<sup>4</sup>. These previous decisions do not set a precedent that I am bound to adopt.

#### *Planning Balance / Overall Conclusion*

38. Notwithstanding the proposed landscape planting and my findings regarding the impact upon the character of the area, the harm to the living conditions of neighbouring residents leads me to find that the proposal would conflict with the environmental objective of the Framework.
39. When all of my findings are weighed together, the adverse impact (noise disturbance) upon the living conditions of neighbouring residents significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
40. I have found that the proposal would accord with some development plan policies and would be contrary to some others. The harm to the living conditions of neighbouring residents would be at odds with the LP1 objective of ensuring residents are able to enjoy their homes without undue disturbance. When considered overall, the proposal conflicts with the development plan.
41. Having regard to all other matters raised, I conclude that the appeal should not succeed.

*Neil Pope*  
Inspector

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<sup>4</sup> In appeals determined by way of written representations the onus is on the respective parties to submit full details of their cases, including providing copies of any relevant decisions.